
(2009) 07 PAT CK 0038
In the Patna High Court
Case No : CWJC No. 10438 of 2006

Mashharu Ram @ Mush Haru Harijan Sao	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2009) 4 PLJR 883

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : Kripanath Jha, for the Appellant; Anil Kumar Jha, for the Respondent

Final Decision : Dismissed

Judgement

Mihir Kr. Jha, J.—Heard Mr. Kripanath Jha, learned counsel for the petitioner and Mr. Anil Kumar Jha, learned G.A. No. -II for the respondents. In this writ application the petitioner in nutshell has assailed the order of punishment dated 30.6.1996 dismissing him from service, as contained in Annexure-19, as also the appellate order dated 4.12.1996 (Annexure-20) with a consequential relief of reinstatement with back wages. In order to be fair to the petitioner this Court in fact would extract all the relief that has been sought by the petitioner in this writ application which reads as follows:

"(I) For issuance of an appropriate direction, order or writ in the nature of "certiorari" quashing memo No. 1357 dated 4.12.1996 (Annexure-20) by which the appeal filed by the petitioner against the punishment has been rejected.

(II) For further issuance of an appropriate direction, order or writ in the nature of "certiorari" quashing memo No. 630 dated 30.6.1995 (Annexure-19) by which the petitioner has been dismissed from service.

(III) For further issuance of an appropriate order, direction or writ in the nature of "mandamus" commanding the respondents to reinstate the petitioner back in service with all consequential benefit.

(IV) For holding and declaring that the petitioner cannot be dismissed from service on the basis of a criminal charge in which the petitioner has got clean acquittal in a criminal proceeding after completing the trial by the competent court of jurisdiction.

(V) For also holding and declaring that the entire departmental proceeding as well as punishment is vitiated on account of acquittal of petitioner in a criminal trial and as such the entire departmental proceeding is fit to be quashed."

2. The very tenor of the prayer of the petitioner would make it clear that for an identical charge the petitioner was subjected to both criminal case and the departmental proceeding but as the events could have been his criminal case as expectedly got delayed and delayed whereas the departmental proceeding was initiated, conducted and concluded expeditiously. The charge against the petitioner in which he has been subjected to the aforementioned punishment reads as follows:

3. The finding of the Enquiry Officer in the enquiry report dated 16.3.1995 is quite specific and categorical that the victim lady Ramnandani Devi was subjected to repeated sexual abuse in a period of 60 days against her consent by the petitioner and others and therefore, such conduct of the petitioner was unbecoming of a member of police force apart from constituting a penal offence u/s 376 of the Indian Penal Code. The Enquiry Officer had gone into great length for recording such a finding after rejecting the plea of defence of the petitioner to the extent that such allegation of rape of the lady concerned could not have been believed in absence of medical evidence. In fact the lady was examined as a witness in the departmental proceeding and also cross-examined as is clearly recorded in the enquiry report but she could not be shaken in her specific stand that she was subjected to physical torture and rape by the petitioner.

4. The disciplinary authority having furnished not only the copy of the enquiry report but elicited response from the petitioner had ultimately passed the impugned order of punishment dated 30th June, 1995 and again all the pleas raised by the petitioner were specifically discussed in the reasoned order passed by the disciplinary authority. The petitioner thereafter had carried his appeal and the appellate authority also by an order dated 4.12.1996 had found no merit in any of the contentions raised by the petitioner.

5. It is significant to note here that the petitioner though remained out of service from 30th June, 1995 on account of the impugned order passed in the aforementioned departmental proceeding and his appeal had also been disposed of on 4.12.1996, the petitioner did not assail the said order for almost next ten years, inasmuch as the present writ application came to be filed on 25.8.2006.

6. Counsel for the petitioner, therefore, in order to wriggle out of unexplained delay of ten years would submit that the petitioner was awaiting result of the criminal case and when he was exonerated by the trial court by the judgment dated 2.7.2005 he had filed the present writ application in the year 2006. There

is no other explanation for belated filing of the writ application and therefore, the unexplained delay of nearly ten years in filing of the writ application by itself is fatal and good enough for dismissal of the writ application.

7. This Court, however, in order to find out the merit of the submission that the petitioner's exoneration by the court of law and holding him guilty by an authority in the departmental enquiry on identical set of allegations has also looked into the materials on record and from them it is found that whereas in the departmental proceeding the victim lady had appeared and was subjected to cross-examination, the lady did not appear as a witness in the criminal case. The criminal case in fact was dropped by way of acquittal only because no witness had been examined to prove the charge. Such judgment of acquittal could have hardly been to the benefit of the petitioner even if it had been passed prior to the departmental proceeding.

8. As a matter of fact when the petitioner had already stood punished in the departmental proceeding way back in the year 1995, his exoneration by the trial court by a judgment of the year 2005 cannot be made a ground for challenging the order of punishment, inasmuch as by now it is well settled that the scope of a criminal case vis-a-vis departmental proceeding operate in two different field having emanated from two different sources. In a criminal case the charge is based on an infringement of penal provision whereas the scope of the charges in departmental proceeding is confined to misconduct. A Government servant and particularly a police constable as the petitioner was expected to maintain a very high standard moral character but then if he had indulged into the alleged misconduct of causing physical harassment and committing rape with a lady, the Police Department could not have remained a mute spectator by allowing the departmental proceeding to have been kept pending till conclusion of the criminal case. In fact that again is not the ratio of any of the judgment of Apex Court on this subject including the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, . In any event when initiation and awarding of punishment in a departmental proceedings even after acquittal in Criminal Case on the same is permissible in law as held by Apex Court in the case of Nelson Motis Vs. Union of India and another, it would be futile to contend that the order of punishment in a departmental proceeding is bad because subsequently the petitioner was acquitted by the court.

9. In that view of the matter, this Court is wholly satisfied that none of the three issues raised by the learned counsel for the petitioner can vitiate the impugned order of punishment. This Court would find that the first issue raised by the petitioner that no opportunity was given to cross-examine the witnesses in the departmental proceeding is absolutely incorrect, inasmuch as even when the Enquiry Officer in his enquiry report had categorically recorded that the petitioner had cross-examined the victim lady and that she could not be shaken in her cross-examination, the petitioner did not raise the said issue on this score when he had submitted his comments on the enquiry report of the disciplinary

authority. In that view of the matter, it is very difficult to accept the submission of the counsel for the petitioner that the petitioner was not extended an opportunity of cross-examination, a fact which itself is believed from his reply/comments to the enquiry report submitted by him.

10. The second submission of the counsel for the petitioner that the charge of the petitioner being on leave on the date and time of committing the alleged aforementioned misconduct of rape is itself falsified inasmuch as it has ultimately been held in course of enquiry that the petitioner was not on leave. The Counsel for the petitioner, in fact, was asked as to place of confinement and physical torture of the victim lady as per the memo of charge and the place of posting of the petitioner and the counsel very fairly submitted that the petitioner was posted at Katihar and the lady was also allegedly confined and raped only at Katihar. If that is an admitted fact, then irrespective of the fact whether the petitioner was on leave or not, the same will have no adverse effect on proving of the main charge in the present departmental proceeding. That being so, even the second submission must fail.

11. The last submission of the learned counsel for the petitioner that since the criminal charge and the departmental proceeding were based on identical facts and therefore, the disciplinary authority ought to have been not proceeded till conclusion of criminal case is in fact an argument of desperation, inasmuch as here the departmental proceeding was already completed in 1996 and if the petitioner was really so sanguine about this issue and if his prayer for staying the departmental proceeding had been allegedly rejected by the authority he had to move the competent court way back in 1995-96 i.e. before the departmental proceeding had been concluded. The petitioner, having participated in the enquiry and taken a chance to get exonerated even by cross-examining the witnesses including the victim lady today cannot be allowed to assail the continuance and conclusion of the departmental proceeding. Even otherwise by now it is well settled that merely because there is similarity in the charges in a criminal case vis-a-vis departmental proceeding, staying of departmental proceeding is not a must. The reliance placed by the petitioner on the judgment of the Apex Court in the case of Capt. M. Paul Anthony (*supra*) and its paragraphs 34 and 36 seems to be wholly misplaced, inasmuch as the ratio which has been laid by the Apex Court is that normally the departmental proceeding should not be stayed and that the order of acquittal of the court of law would have persuasive value if it was pronounced prior to the order of departmental authority in the departmental proceeding. In the present case the order of punishment had already been passed in the departmental proceeding in 1996 and the petitioner after almost ten years of the order of departmental authorities is claiming the benefit of an order of court acquitting him of the charges passed in 2006 which, can never be made a ground for looking into the correctness of the finding recorded in the departmental proceeding.

12. In that view of the matter, this Court finds also no merit in the case of the

petitioner even if it would condone the delay on the part of the petitioner in filing this writ application after ten years of cause of action.

13. In such a situation when the writ application is hopelessly delayed by a period of at least ten years and there is no infirmity in the order of dismissal and its appellate order, this Court would find no reason to interfere with the impugned orders and accordingly, this application must be and is hereby dismissed.

14. After the aforesaid order was dictated Mr. Jha has stood to raise an additional issue by taking a plea that the circular of the Appointment Department dated 23rd of August, 1963 postulates that if in the criminal case the accused Government servant who had earlier been punished in the departmental proceeding is acquitted of the charges by a competent court the departmental appointing authority is under obligation to immediately review the case. First of all the said circular of the State Government seems to be contrary to the spirit of service jurisprudence and the law laid down by Apex Court but then if the petitioner was so sanguine about it, he had to move the authority by seeking review before the State Government instead of moving this court by this writ application. The petitioner admittedly had not placed the order of his acquittal before the disciplinary authority and therefore, this argument at the fag end of dictating this judgment without any pleading has been only noted only for its being rejected. Thus this Court finds no merit in this writ application and the same is accordingly dismissed.